IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2309 OF 2005

FRANCO-INDIAN PHARMACEUTICALS
PVT.LTD.A COMPANY INCORPORATED
UNDER THE COMPANIES ACT,1956
AND HAVING ITS FACTORY AT
54-B,MATHURADAS VASANJI MARG,
ANDHERI(E), MUMBAI 93. ... PETITIONERS

VERSUS

FRANCO-INDIAN WORKERS UNION
A TRADE UNION REGISTEREDUNDER
THE TRADE UNIONS ACT,1926,AND
HAVING ITS REGISTERED OFFICE AT
676-680,B.J.MARG,MUMBAI -11 ... RESPONDENTS.

MR. C.V.SINGH ALONGWITH GEETANJALI PRABHU & MAHESH LONDHE I/B. S.UDESHI & CO. FOR THE PETITIONERS.
MR. J.P.CAMA I/B. M.D.NAGLE FOR THE RESPONDENTS.

CORAM : S.K.SHAH, J.
DATE : October 6, 2005.

P.C.

1. Heard,

2. Rule returnable forthwith and heard finally by consent of the parties.

3. The Order impugned herein is passed by the Industrial Tribunal on 6th May, 2005, whereby the Petitioners application, to the effect that the Industrial Tribunal shall pass Award on the basis of the Settlement already arrived at between the majority of the workers with the Petitioners Management, was rejected

4. The reasons assigned by the Industrial Tribunal for rejecting the application were mainly on two (i) Whether the settlement (as already arrived at between the Majority of the workmen and the Management) was just and fair, is a matter to be scanned on the basis of evidence and (ii) that the antecedents as pointed out in the Order, were sufficient to hold that the principles of fairness and justness could be extended so as to accept the fairness and justness of the settlement; meaning thereby that the Industrial Tribunal held that the antecedents were of such a nature that those were casting aspersions on justness and fairness of the settlement arrived at between the majority of he workers and the Management. On those two ground, that the application of the Petitioners came to be rejected.

5. The contention raised on behalf of the Petitioner is that when the majority of workers had arrived at the settlement with the Management, the settlement must be presumed to be just and fair. It was the duty of the Industrial Tribunal to proceed on the presumption that the settlement so arrived at was just and fair and then should have passed the Award. It is further submitted that the Industrial Tribunal could have given a finding that the settlement was not

just and fair and then only could have rejected the application.

6. As against this the learned Counsel for the Respondents submits that the two grounds, which were taken into consideration by the Industrial Tribunal for rejecting the application were just and proper and as the Industrial Court itself has observed that it would be a matter of evidence to decide the justness and reasonableness of the settlement, at the time of finally disposing of the reference.

7. The learned Counsel for the Petitioner has heavily relied on the decision rendered by Single Judge of this Court, in case of SARVA SHRAMIK SANGH VS. V.V.F.LIMITED & ANR., REPORTED IN 2002 I CLR 707. The relevant observations are thus :-

> "... if we were to apply the principle enunciated by the Apex Court that the settlement though not binding on parties or persons, because they were not parties thereto, but if demand is raised by such persons then the Court would apply the terms of settlements, even to such persons by passing award in those terms unless it is shown that the settlement as a whole is unjust and unreasonable..."

It is on the basis of these observations that the learned Counsel for the Petitioners submits that it is the duty of the Tribunal to first decide whether the settlement arrived at between the majority of the workers and the Management, is just and reasonable and if the finding is in the affirmative, then it should pass the Award and in case the finding is in the negative then to proceed to consider the reference/demand.

8. In the case before me, however, the Industrial Court has considered whether the Award could be passed in terms of the settlement arrived at between the majority of the workers and the Management and it has found that the same could be done only by allowing the parties to lead the evidence. These observations could not be said to be illegal or perverse and, therefore, need no disturbance. The Petition, therefore, shall have to be dismissed at the threshold. However, while doing so it is necessary to observe that the Industrial Court while deciding the main reference shall frame a specific issue as to the justness,fairness or reasonableness of the settlement arrived at between the majority of the workers and the Management and give finding thereon, may be after allowing the parties to lead the evidence on it and then, proceed to consider the reference/demand.

9. With these observations, the Writ Petition stands dismissed.

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[S.K.SHAH, J.]